IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CARLSON RESTAURANTS WORLDWIDE COMPANIES, etc.,	)	
Plaintiff,	)	
v.	)	No. 05 C 3535
OLYMPIC SIGNS, INC., et al.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Landmark Outdoor Advertising Company, Inc. ("Landmark," incorrectly sued as "Landmark Display Sign Company, Inc.") has just filed a supplemental brief in support of its Fed. R. Civ. P. ("Rule") 12(b)(6) motion to be dismissed from this action brought against it and Olympic Signs, Inc. ("Olympic") stemming from a fire at a TGI Friday restaurant in Hoffman Estates, Illinois. For the reasons briefly stated here, Landmark's motion is denied.

Landmark's supplemental brief points to the Illinois statute of repose, 735 ILCS 5/13-214 ("Section 13-214") as one of two predicates for dismissal. Section 13-214(b) bars any action "based upon tort, contract or otherwise" after ten years has elapsed from the time of a complained-of act or omission "in the designing, planning, supervision, observation or management of construction, or construction of an improvement to real property." In this instance Landmark designed, manufactured and installed the neon lights back in 1995, and this action was filed on June 16, 2005.

Where Landmark goes astray in that respect is in asserting that its claimed "act or omission" necessarily antedated June 16, 1995, based on these assertions in the response to the Rule 12(b)(6) motion:

> On or about May 1995, Carlson and Landmark entered into an agreement in which Landmark would design, manufacture, test, install and inspect three neon signs for a TGI Fridays located in Hoffman Estates, Illinois. Landmark did in fact design, manufacture and install the subject neon lights for the TGI Fridays.

But because nothing is said there as to when the actual manufacture and installation took place, Landmark cannot prevail as a matter of law under the statute of repose at this point.

Landmark's other purported string to its bow is also broken--its attempted reliance on the five-year statute of limitations mischaracterizes the Illinois caselaw that consistently applies a discovery rule to toll the accrual of a claim such as that involved here. Indeed, in the very next year after Justice (then Judge) John Paul Stevens wrote at length about the Illinois law on that subject (Gates Rubber Co. v. USM Corp., 508 F.2d 603 (7th Cir. 1975)), the Illinois Appellate Court for the First District expressly applied the discovery rule in a construction case much like the current one, where plaintiff neither knew nor could reasonably have known of a construction defect that resulted in damage only years later (E.J. Korvette Div. v. Esko Roofing Co., 38 Ill.App.3d 905, 350 N.E.2d 10 (1st Dist. 1976))--a principle that has continued to be applied in

numerous cases since then. In sum, Landmark's other basis for dismissal fails as well.

As stated at the outset, then, Landmark's motion is denied.[1] Landmark is ordered to answer the Complaint on or before September 21, 2005.

Milton I. Shadur
Senior United States District Judge

Date: September 9, 2005

[1] This ruling is obviously without prejudice to a potential reassertion of affirmative defenses of limitations or repose when the facts (as contrasted with the pleadings) are fleshed out.